



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Fritz Schaefer
Industrial Microwave Technologies, Inc.
545 Brandywine Drive
Colorado Spring, CO 80906

Paper No. 12

COPY MAILED

AUG 26 2003

OFFICE OF PETITIONS

In re Application of
Fritz Schaefer : DECISION ON PETITION
Application No. 09/669,400 :
Filed: September 22, 2000 :
Title: PROCESS FOR TREATING WASTE
OIL : :

This is a decision on the renewed petition under 37 CFR 1.137(a), filed August 25, 2003, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(a)" or "Renewed Petition under 37 CFR 1.137(b)," as appropriate. Extensions of time under § 1.136(a) are permitted.

The above-identified application became abandoned for failure to timely file a proper reply to the Notice of Non-Compliant Amendment (37 CFR 1.121) mailed August 15, 2002. This Notice set a time period of ONE MONTH from the mailing date of the notice to meet the requirements of 37 CFR 1.121, with extensions of time obtainable under § 1.136(a). No reply having been received and no extensions of time obtained, the application became abandoned effective September 16, 2002. A courtesy Notice of Abandonment was mailed on May 2, 2003.

In response, petitioner timely filed the initial petition under § 1.137(a). However, the petition was dismissed for failure to make an adequate showing of unavoidable delay. Petitioner asserted nonreceipt of the Office action dated August 15, 2002, but failed to submit docket records in support of this contention and made no statements attesting to the fact that a search of the file jacket and docket records indicated that the Office communication was not received (Decision mailed August 25, 2003).

On instant renewed petition, petitioner stated that he is a *pro se* applicant and as such, does not have a docket record. He further attested to having searched his file and having no record of the Office action.

This evidence has been considered, but found insufficient to meet applicant's burden of showing unavoidable delay. See MPEP 711.03(c). Pro se applicants may not have as elaborate a docketing system as a law firm. This does not warrant a total waiver of the requirement of a showing that includes copies of docket records or an adequate proxy for such copies. A pro se applicant should have some written records evidencing receipt of communications from and mailing of communications to the Office available to provide proof of nonreceipt. It is suggested that applicants maintain a log of communications from and to the Office, with dates of receipt, due dates and mailing dates of responses and other papers filed noted. Furthermore, applicants may maintain entries on the file jackets noting these important dates. Absent such evidence, applicants may not be able to overcome the presumption that the correspondence was properly mailed and received at the correspondence address of record and thereafter, misplaced by applicants.

In this instance, petitioner has stated that he searched his file, he has no record of receiving the Office action and that he does not have a docketing system. However, the petition includes no evidence, in the form of written records, to support petitioner's claim of nonreceipt. The burden is on petitioner to provide adequate evidence. Petitioner has not met this burden.

Having not made an adequate showing of non-receipt of the Office action or otherwise, shown unavoidable delay, the petition cannot be granted under § 1.137(a).

Alternative Venue

While the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable, petitioner is not precluded from obtaining relief by filing a request for reconsideration pursuant to 37 CFR § 1.137(b) on the basis of unintentional delay. A grantable petition under § 1.137(b) must be accompanied by: (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee set forth in 37 CFR § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to § 1.137(d).

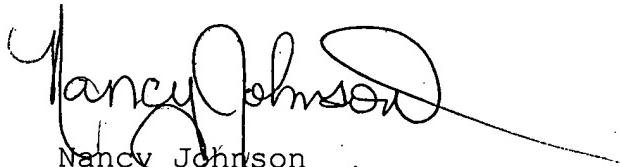
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA

Telephone inquiries related to this decision should be directed to the undersigned at (703) 305-0309.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions